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| APPLICATION NO.         | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/596,040              | 05/25/2006  | Makoto Oyama         | 09657/0204349-US0   | 1026             |
| 7278                    | 7590        | 07/07/2009           | EXAMINER            |                  |
| DARBY & DARBY P.C.      |             |                      | HALE, GLORIA M      |                  |
| P.O. BOX 770            |             |                      | ART UNIT            | PAPER NUMBER     |
| Church Street Station   |             |                      | 3765                |                  |
| New York, NY 10008-0770 |             |                      |                     |                  |
|                         |             |                      | MAIL DATE           | DELIVERY MODE    |
|                         |             |                      | 07/07/2009          | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/596,040             | OYAMA ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gloria Hale            | 3765                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 19 March 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 3-19-09 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|                                                                                                              |                                                                   |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|                                                                                                              | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is no support in the original specification for the new terminology of “integrated”..

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2 and claim 3, line 2 applicant has added the term “integrated”. However, the original specification did not disclose as to what the term “integrated” encompasses. It is not clear as to what the metes and bounds of the term “integrated” refers. It is not clear if the tightening portion is within the fabric structure itself as integrated in the weave or knot of the material or if it is formed by elastic yarns within the weave or knit or if the tightening portion is added or integrated in some other way to the garment. Applicant in claims 1-20 have not claimed the main support garment structure in the body of the claim wherein the tightening portion is then added. In claim 1, line 2 it is not clear as to what “an are” encompasses. It is not clear as to how the

tightening portion is structured on the garment since applicant has not claimed the garment structure needed to support the tightening portion. It is also not clear if the body portions described are of the garment or the wearer since they have not been clearly claimed as such. Applicant needs to claim the body garment structure that the tightening portion is attached to. In claim 2 it is not clear as to what the area of line 2 encompasses. No antecedent basis is present for "The area" in that it does not appear to be the area of claim 1, line 2. It is not clear as to how the tightening force varies along the area. Is it in a vertical or lateral direction. Claim 3 is not clear for the same reasons as claimed 1 in regard to the term "integrated. In claim 3, line 2 it is not clear as to what "The area" encompasses. The body garment structure itself has not been adequately claimed to support a left and right tightening portion or as to what they are left and right of. Such as of a wearer's body etc. It is not clear if the body parts claimed are of the garment or of the wearer since no garment structure has been clearly claimed. Only the tightening portions have been claimed but it is not clear as to what they are supported by or attached to since the garment structure was not claimed. The left or right tightening portions should be claimed as being respectively over the claimed areas. In claim 5 it is not clear as to how the tightening force weakens in the directions as claimed. Is it within the knit or weave of the structure or does it include less or more elastic yarns therein to provide more support. Applicant needs to claim a garment support structure in the body of the independent claims wherein the supporting tightening portions are then attached. Without the garment structure being adequately claimed it is not clear as to where the upper side, lower side are placed.

Present claim 1 is incomplete just as is claim 3 in that the garment structure was not claimed to provide the support for the tightening portions, otherwise a tightening structure such as a harness with buckled belt configurations would meet the claims. Also the integrated tightening portion claimed would not be limited to the areas outlined only. Applicant needs to claim that the tightening portion is only in the claimed areas. Otherwise the claim is met by any elasticized pant garment.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Dicker (US 5109546).

The above rejection as previously stated in the 10-1-08 action is included herein by reference.

***Response to Arguments***

Applicant's arguments filed 3-19-09 have been fully considered but they are not persuasive.

The Dicker garment discloses an integrated tightening portion in that it is attached to the garment as broadly claimed and disclosed. Applicant has not disclosed the term "integrated" anywhere in the original specification or claims and therefore the

metes and bounds of the term “integrated” is not clear. Applicant is arguing more than what has been claimed or disclosed in regard to the term “integrated”. It is not clear as to what applicant means by the term “integrated” as now discussed above. Since the term “integrated” can imply many different garment structures it could also have been considered to be new matter. However, a new matter rejection has not been made. Applicant should claim their exact structure instead of attempting to claim the structure using one or two words. Thereby avoiding confusion in regard to the makeup of the structure. Applicant should claim each garment section and the garment structure itself that the tightening portions are attached to or with so that such confusion is avoided. Dickers leg band is a tightening portion in that it tightens the leg extension ability and is of an elastic material that would apply force. Applicant has not claimed an inward tightening force only a tightening force in general. Also the buttocks portion of the Dicker band would have a downward force on the buttocks as broadly claimed by applicant.. Figure 7 shows the bands removed from the pants wherein the rear portion of the bands are more towards the cleft area than the portions shown in embodiment within figure 5. Applicant has not clearly claimed the supportive pant garment structure with the bands attached thereto and therefore the support band structure as claimed is clearly shown in figure 7 whether it is un attached to a garment or later attached to a garment. Applicant has not clearly claimed the pant garment with the elastic material sections as argued. Therefore the Examiner has suggested that applicant claimed the elastic pants garment structure in its entirety and not just the reinforcing structures alone. The front tightening portion is the frontally positioned portion 38 as

seen in figure 7. The main differences of applicant's invention and Dicker have not been adequately claimed. Applicant's specification did not state that the garment portions are "integrated". Applicant needs to claim the entire lower torso garment structure that is formed of different sections of elasticized material as outlined in the specification. Applicant is attempting to more broadly claim their invention. However, the present claims claim many other constructions as seen in Dicker.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/  
Primary Examiner, Art Unit 3765

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